Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1535

WILLIAM A. ALBAUGH, Democratic Candidate in the contested 1974 Maryland Primary election for United States Senator nomination,

Petitioner,

v.

MARVIN MANDEL, Governor of Maryland,

REGINALD ASPLEN, Chairman of State Administrative Board of Election Laws,

and

FRANCIS R. VALEO, Secretary of the United States Senate,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the District of Columbia Circuit, dated May 9, 1975, dismissing the appeal from the judgment of the District Court for the District of Columbia, entered September 25, 1974, dismissing petitioner's complaint seeking relief to correct respondents' error in certifying 1974 United States Senate election results from the State of Maryland on the false assumption that the District of Columbia has ceased to be a part of the State of Maryland.

The judgment of the District Court is found on page 4a of this petition's appendix and the judgment of the Court of Appeals is found on page 7a.

OPINIONS

No opinion was rendered by the Court of Appeals for the District of Columbia Circuit or by the District Court for the District of Columbia.

JURISDICTION

The judgment of the Court of Appeals was entered on May 9, 1975 (App. 7a). The jurisdiction of this Court is invoked under Constitution, Art. IV, Sec. 2 and under 28 U.S.C. §1254(3).

SPECIAL RULE

This proceeding challenges the constitutionality of the Act of Congress which separated the District of Columbia from the State of Maryland and challenges the validity of the 23rd Amendment to the United States Constitution tied to this contested separation. The lower Courts have not, pursuant to 28 U.S.C. §2403, certified to the Attorney

General that such a constitutional question has arisen. However, the Petitioner has always served the Attorney General with a copy of everything served upon the Respondents. The Petitioner has not named the United States, the Clerk of the United States House of Representatives, nor the Director of the Census as individual parties to this action and 28 U.S.C. §2403 may be applicable.

QUESTIONS PRESENTED

I. Whether the Petitioner has standing to be heard on the merits in view of the various technical defenses advanced by the Respondents?

II. Whether land owned and occupied by resident citizens may be removed from the State of Maryland without disturbing the existing Congressional Election District boundaries and invoking the One Man-One Vote Constitutional rule which prohibits the enactment of inequitable Redistricting Laws?

III. Whether, granted that the District of Columbia is still a legal part of the State of Maryland, the 23rd Amendment to the United States Constitution is not self-contradictory and consequently invalid?

CONSTITUTIONAL AND STATUTORY LAWS INVOLVED

I. Constitution Art. I, Sec. 4

> "The times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations . . . "

II. Constitution Art. I, Sec. 8(17)

"The Congress shall have power . . . to exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings . . . "

III. Constitution Art. IV, Sec. 2

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states . . . "

IV. Constitutional Amendment XXIII

"Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation."

V. The Maryland Act of Cession (Md. Act, December 23, 1788, ch. 46) (App. 1a).

VI. The Congressional Act Accepting Cession (1 Stat. 130, ch. 28, July 16, 1790) (App. 2a).

STATEMENT OF THE CASE

On August 27, 1974 the Petitioner, William A. Albaugh, candidate for the Democratic Nomination for the United States Senate in the Maryland September 10, 1974 Primary Election filed a complaint in the United States District Court for the District of Columbia against the Respondents, Marvin Mandel, Governor of Maryland, Reginald Asplen, Chairman of the State Administrative Board of Election Laws and Francis R. Valeo, Secretary of the United States Senate alleging that the Respondents were arbitrarily excluding resident citizens of the District of Columbia from the 1974 Maryland Elections and denying them an opportunity to register in, run in, and vote in said elections.

The complaint contested the constitutionality of the Maryland Act of Cession (Md. Act, December 23, 1788, ch. 46) (App. 1a) and the Congressional Act Accepting Cession (1 Stat. 130, ch. 28, July 16, 1790) (App. 2a) if these acts ceding Maryland land to the United States Government to establish a Federal territory had the effect of removing the ceded territory from the State of Maryland and depriving the resident citizens of the District of Columbia of their voting privileges in conflict with the "equal privileges" clause, Constitution Art. IV, Sec. 2.

Petitioner asserted that the arbitrary exclusion of a half million votes from the District of Columbia resident citizens of voting age would have a decisive effect on the results of the 1974 Maryland United States Senate Election and that as a candidate, himself, he was entitled to a fair election count.

In seeking an interlocutory and permanent injunction to block the transfer of invalid final election results to the United States Senate under the authority of Maryland Art. 33, Sec. 18-2(c) Petitioner requested a determination by a bench of three Judges under the authority of 28 U.S.C. §2281.

On September 6, 1974 the District Court denied Petitioner's August 29, 1974 motion for temporary injunction and on September 25, 1974 dismissed the complaint for lack of jurisdiction (App. 4a). On November 19, 1974 the District Court denied Petitioner's motion to reconsider on the grounds that the action was barred by the doctrine of res judicata and that, furthermore, venue was improperly laid and there was a failure to join the United States.

On May 9, 1975 the United States Court of Appeals for the District of Columbia Circuit granted Respondents' motion for summary affirmance and denied Petitioner's motion for decision on the merits or certification of the cession question (App. 7a).

REASONS FOR GRANTING THIS WRIT

I. THE COURT OF APPEALS ERRED IN DENYING PETITIONER STANDING TO BE HEARD ON THE MERITS IN VIEW OF THE VARIOUS TECHNICAL DEFENSES ADVANCED BY THE RESPONDENTS.

The Supreme Court's cession ruling in *Evans v. Cornman*, 398 U.S. 419 (1970) established that cession does not change the boundary lines of the State of Maryland and that resident citizens of the Federal territory involved must be treated as Maryland citizens with respect to Congressional Reapportionment and Congressional Elections in Maryland. In deference to the Supreme Court's decision in the *Evans* case the lower Courts should have applied the cession ruling uniformly to all Federal territories ceded by Maryland and decided this District of Columbia cession case in accordance with the *Evans* case, decided it on its merits, or certified the question to the Supreme Court.

Seats in the United States House of Representatives cannot be correctly reapportioned in direct proportion to the respective population of each State in the decennial reapportionments unless the boundary lines and the population of the State of Maryland are accurately known. Valid United States Senate elections in the State of Maryland in 1974 depended upon the use of the correct boundary lines for the State of Maryland and an honest opportunity for all the resident citizens in the State to vote and have their votes counted. The arbitrary exclusion of the District of Columbia from Maryland solely because this Federal territory has been ceded to the United States not only violates the cession ruling laid down in the *Evans* case but deprives the State of Maryland of about twenty percent of its total correct population, deprives Maryland

of two additional voting seats in the House of Representatives, and deprives all Senate candidates including the Petitioner from receiving their fair share of District of Columbia votes in the Senate election.

Respondent Valeo, acting as Secretary of the Senate, is probably the highest administrative agent of Congress and he has overriding authority and responsibility to supervise the Director of Census, to administer the correct reapportionment of Congress every ten years, and to guarantee that the correct boundary lines of the State of Maryland are used for both the reapportionments and all United States Senate Elections in the State of Maryland.

Since this is the Petitioner's first action against any Secretary of the Senate, the lower Courts erred in refusing to hear the case on the merits because of "res judicata" or "lack of venue".

Petitioner has the same standing to be heard on the merits as any average citizen would have who happens to be a resident citizen and voter in the State of Maryland, who was an official candidate in the Senate election being contested, and who has presented the District of Columbia cession question to this Court several times before without a hearing on the merits. It is a felony in Maryland to miscount election results and all citizens under the doctrine of misprison have standing to report any election fraud of which they have special knowledge and have standing to be heard on the merits.

II. WHETHER LAND OWNED AND OCCUPIED BY RESIDENT CITIZENS MAY BE REMOVED FROM THE STATE OF MARYLAND WITHOUT DISTURBING THE EXISTING CONGRESSIONAL ELECTION DISTRICT BOUNDARIES AND INVOKING THE ONE MAN-ONE VOTE CONSTITUTIONAL RULE WHICH PROHIBITS THE ENACTMENT OF INEQUITABLE REDISTRICTING LAWS?

Without violating the fundamental laws of mathematical logic there is no way to remove territory from the State of Maryland without changing the boundary lines that define the existing Congressional Election Districts of Maryland. If the contested Acts of Cession (App. 1a and 2a) are interpreted as removing the District of Columbia territory from the State of Maryland these Acts are Redistricting Laws that must pass the one man-one vote test. Clearly the Acts fail this test because resident citizens of the District of Columbia are not transferred to a different State where their one man-one vote privileges would remain intact.

Cession was properly defined in the *Evans* case and should be applied uniformly throughout the United States. Cession gives Congress authority to enact all the local laws for a Federal territory but it does not have any effec upon State boundaries or the state status of resident citizens. If Congress doesn't wish the District of Columbia territory to be a part of the State of Maryland, it always is free to enact a simple statute law making the District of Columbia part of another State.

III. WHETHER, GRANTED THAT THE DISTRICT OF COLUMBIA IS STILL A LEGAL PART OF THE STATE OF MARYLAND, THE 23RD AMENDMENT TO THE UNITED STATES CONSTITUTION IS NOT SELF-CONTRADICTORY AND INVALID.

The 23rd Amendment provides that the District constituting the seat of Government shall be entitled to three electors and that these electors shall be in addition to the electors appointed by the States. As long as the seat of Government is a part of the State of Maryland or any other State it is logically impossible to allot it three electors in addition to those given to the States. The Amendment is meaningless and should be voided.

CONCLUSION

For the reasons stated herein, Petitioner respectfully prays that this Petition for Certiorari be granted.

Respectfully submitted,

WILLIAM A. ALBAUGH
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Mt. Rainier, Maryland 20822
Petitioner, Pro Se

APPENDIX A

I

(Md. Act, December 23, 1788, ch. 46)
ACT AUTHORIZING CESSION FROM STATE OF MARYLAND

AN ACT To cede to Congress a district of ten miles square in this State for the seat of the Government of the United States

BE IT ENACTED, by the General Assembly of Maryland, That the representatives of this state in the house of representatives in the congress of the United States, appointed to assemble at New York on the first Wednesday of March next, be and they are hereby authorized and required, on the behalf of this state, to cede to the congress of the United States, any district in this state, not exceeding ten miles square, which the congress may fix upon and accept for the seat of government of the United States. (Md. act, December 23, 1788, ch. 46.)

II

(1 Stat. 130, ch. 28)

An Act for establishing the temporary and permanent seat of the Government of the United States.

SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a district of territory, not exceeding ten miles square, to be located as hereafter directed on the river Potomac, at some place between the mouths of the Eastern Branch and Connogochegue, be, and the same is hereby accepted for the permanent seat of the government of the United States. Provided nevertheless, That the operation of the laws of the state within such district shall not be affected by this acceptance, until the time fixed for the removal of the government thereto, and until Congress shall otherwise by law provide.

SEC. 2. And be it further enacted, That the President of the United States be authorized to appoint, and by supplying vacancies happening from refusals to act or other causes, to keep in appointment as long as may be necessary, three commissioners, who, or any two of whom, shall, under the direction of the President, survey, and by proper metes and bounds define and limit a district of territory, under the limitations above mentioned; and the district so defined, limited and located; shall be deemed the district accepted by this act, for the permanent seat of the government of the United States.

SEC. 3. And be it (further) enacted, That the said commissioners, or any two or them, shall have power to purchase or accept such quantity of land on the eastern side of the said river, within the said district, as the President shall deem proper for the use of the

United States, and according to such plans as the President shall approve, the said commissionrs, or any two of them, shall, prior to the first Monday in December, in the year one thousand eight hundred, provide suitable buildings for the accommodation of Congress, and of the President, and for the public offices of the government of the United States.

SEC. 4. And be it (further) enacted, That for defraying the expense of such purchases and buildings, the President of the United States be authorized and requested to accept grants of money.

SEC. 5. And be it (further) enacted, That prior to the first Monday in December next, all offices attached to the seat of the government of the United States, shall be removed to, and until the said first Monday in December, in the year one thousand eight hundred, shall remain at the city of Philadelphia, in the state of Pennsylvania, at which place the session of Congress next ensuing the present shall be held.

SEC. 6. And be it (further) enacted, That on the said first Monday in December, in the year one thousand eight hundred, the seat of the government of the Unites States shall, by virtue of this act, be transferred to the district and place aforesaid. And all offices attached to the said seat of government, shall accordingly be removed thereto by their respective holders, and shall, after the said day, cease to be exercised elsewhere; and that the necessary expense of such removal shall be defrayed out of the duties on imposts and tonnage, of which a sufficient sum is hereby appropriated.

Approved, July 16, 1970.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM A. ALBAUGH, *Plaintiff,*	)	
v.	)	**Civil Action No. 74-1282**
MARVIN MANDEL, *et al.,* *Defendants.*	)	

ORDER

Upon review of the complaint and jacket and it appearing that service cannot be perfected and that the Court lacks jurisdiction. the complaint is dismissed.

SO ORDERED.

/s/ Gerhard A. Gessel
United States District Judge

September 25, 1974

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM A. ALBAUGH, *Plaintiff,*	)	
v.	)	**Civil Action No. 74-1282**
MARVIN MANDEL, *et al.,* *Defendants.*	)	

MEMORANDUM AND ORDER

Plaintiff's motion to reconsider the dismissal of this action is denied. In addition to the factors mentioned in the Court's earlier order dismissing this action, it now appears that this action is barred by the doctrine of *res judicata.* See *Albaugh v. Tawes,* 233 F. Supp. 576 (D. Md. 1964) *aff'd* 379 U.S. 27, *reh. den.* 379 U.S. 940. Moreover, venue is improperly laid, there has been a failure to join the United States, and no claim on which relief may be granted has been stated against the named defendants.

For these and other reasons more fully set forth in the briefs filed by defendants and unchallenged by the plaintiff, the motion for reconsideration should be and hereby is denied.

SO ORDERED.

/s/ Gerhard A. Gessel
United States District Judge

Serve:

William A. Albaugh, pro se plaintiff
Francis B. Burch, for defendants 1 and 2
Charles D. Ferris, for defendant 3

November 19, 1974

APPENDIX D

V.
(Filed May 9, 1975)

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 74-2110

September Term, 1974

WILLIAM A. ALBAUGH, Appellant

v.

MARVIN MANDEL, *et al.*, Appellees

Decided May 9, 1975

Before: McGowan and Robinson, Circuit Judges

O R D E R

On consideration of appellees' motion for summary affirmance and response to order to show cause, and of appellant's *pro se* motion for decision on the merits or certification of the cession question, it is

ORDERED by the Court that the order to show cause filed April 16, 1975 is discharged, and appellees' motion for summary affirmance is granted, and, it is

FURTHER ORDERED by the Court that appellant's aforesaid motion is denied.

Per Curiam

Dated: May 9, 1975